

Members

Rep. Phil Hoy, Chairperson
Rep. Linda Lawson
Rep. Kathy Richardson
Rep. Eric Koch
Sen. Richard Bray, Vice-Chairperson
Sen. Joseph Zakas
Sen. John Broden
Sen. Timothy Lanane
Chief Justice Randall Shepard
Thomas Felts
David Whicker
Bill Overdeer
Ludy Watkins



COMMISSION ON COURTS

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Timothy Tyler, Attorney for the Commission
Mark Goodpaster, Fiscal Analyst for the
Commission

Authority: IC 33-23-10

MEETING MINUTES¹

Meeting Date: October 1, 2007
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Phil Hoy, Chairperson; Rep. Linda Lawson; Rep. Kathy Richardson; Rep. Eric Koch; Sen. Richard Bray, Vice-Chairperson; Sen. Joseph Zakas; Chief Justice Randall Shepard; Thomas Felts; David Whicker; Bill Overdeer.

Members Absent: Sen. John Broden; Sen. Timothy Lanane; Ludy Watkins.

Rep. Phil Hoy, Chairperson of the Commission on Courts (Commission), called the meeting to order at 1:00 P.M.

The first person to testify was Judge John Baker, Chief Judge of the Indiana Court of Appeals (Court), concerning the possible creation of a sixth three judge panel for the Court. Judge Baker distributed to the Commission the "Court of Appeals of Indiana 2006 Annual Report," a chart showing the fully briefed cases and majority opinions and dispositive orders of the Court from 1985 to 2006, and a chart showing the Court's fully briefed cases on a monthly basis from 2005 to 2007 (Handout #1).

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Judge Baker stated that in 2006 the Court had disposed of 100% of the cases the Court had in its inventory for that year. Judge Baker said a colleague of his had told him the Court "might make a mistake once in a while, but at least we do it quickly."

Judge Baker continued by stating that the Court issued 1,967 fully briefed majority opinions in 2002. He said that in 2006, with the same number of judges, the Court issued 2,509 fully briefed majority opinions.

Judge Baker said the number of cases the Court had to deal with was increasing every year which meant that, with the same number of judges, the amount of time a judge could devote to each case was declining every year. Judge Baker said the General Assembly had to decide what kind of Court the State of Indiana should have.

In response to questions from Commission members, Judge Baker said that a little more than half of the cases the Court heard were criminal cases. He stated that the Court only had control over the number of interlocutory appeals the Court heard. He said that the number of criminal appeals was growing when compared to civil appeals in part because of the increasing use of mediation in civil cases.

The next person to testify was Sen. Sue Errington concerning Delaware County's request for a magistrate. Sen. Errington introduced Judge Richard Dailey of the Delaware Circuit Court #2.

Judge Dailey distributed letters supporting the creation of a magistrate position in Delaware County from Judge Marianne Vorhees of the Delaware Circuit Court #1, Judge Robert Barnet of the Delaware Circuit Court #3, and Judge John Feick of the Delaware Circuit Court #4 (Handout #2). Judge Dailey said this was the first time Delaware County had ever requested a magistrate.

Judge Dailey continued by stating that Delaware County had suffered from a loss of jobs that had increased the amount of poverty in the county and made it difficult for the county to maintain its level of services. He said this was especially true concerning the way family and juvenile cases were handled by the Delaware County court system. Judge Dailey said the primary responsibilities of a new magistrate would be to handle family and juvenile related cases.

The next person to testify was Mark McKinney, Delaware County Prosecuting Attorney. Mr. McKinney stated he had made juvenile issues a priority since taking office. He said his office handles 300 juvenile delinquency cases every year. He stated that continuity and consistency were needed in these cases and a full-time magistrate could effectively provide both of those in Delaware County.

Judge Dailey added that it was important to not return children who "had been put back together" to dysfunctional families. He also said Delaware County had the facilities and personnel ready to support the addition of a magistrate.

In response to questions from Commission members, Judge Dailey stated he believed there was no local opposition to the creation of a magistrate position in Delaware County.

The next person to testify was Judge Steven Cox of the Franklin Circuit Court. Judge Cox said Franklin County had asked for and received a magistrate last year because the county lacked the facilities and resources to support the creation of a new court. He stated that since that time, Franklin County had been able to renovate its court house thanks in part to a grant obtained through the City of Lawrenceburg.

Judge Cox continued by stating the changes to the court house would allow the addition of a second judge in Franklin County. He said originally he thought the creation of a superior court with one judge would be best, but he now felt a unified circuit court with two judges made more sense.

In response to questions from Commission members, Judge Cox said the creation of a new court in Franklin County would mean the magistrate would "drop away." He said the new court house facilities would be ready by June 2008 and he believed there was no local opposition to the addition of another court.

The next person to testify was Rep. Jeb Bardon concerning converting 20 commissioners in Marion County to magistrates. Rep. Bardon said that today (October 1) the County Option Income Tax in Marion County was being increased primarily to fund improvements in public safety. He said he thought converting these commissioners to magistrates in Marion County would also improve public safety. Rep. Bardon then introduced Judge Gerald Zore from the Marion Superior Court.

Judge Zore said it had been "kind" of the General Assembly to recently add additional judges and magistrates to the Marion Superior Court. He stated, however, that the creation of these 20 magistrate positions in Marion County would not be creating new positions since the magistrates would replace current commissioner positions. He said that this would have the effect of taking the commissioners off the county payroll as county employees and placing them on the state payroll as magistrates. He said he felt this was appropriate since Indiana has a state judicial system.

The next person to testify was Rep. William Friend concerning the addition of another judge to the Miami Superior Court. Rep. Friend introduced Judge Daniel Banina of the Miami Superior Court. Judge Banina distributed an information packet to the Commission (Handout #3) that contained Weighted Caseload Report data for Miami County from 1996 through 2006 and resolutions supporting the creation of a third trial court in Miami County.

Judge Banina stated that the caseload information showed Miami County had demonstrated a need for a third trial court over the past six years. He said that the resolutions were from the County Council of Miami County, the Miami County Board of Commissioners, and the Miami County Bar Association supporting the creation of the new court.

The next person to testify was Bruce Embrey, City Attorney for Peru, Indiana, and former judge in Miami County. Mr. Embrey stated he served on the court for 26 years and the accuracy and usefulness of the Weighted Caseload Report had improved dramatically over the years. However, he stated that one variable that was not taken into account in the Report data was that Miami County now contained the largest prison in the state. He said the prison population in Miami County files numerous cases in the courts, especially habeas corpus writs and small claims. Judge Banina confirmed that the prison continued to create more cases.

In response to questions from Commission members concerning the creation of a unified circuit court system, Judge Banina stated he didn't see any benefit of doing that in Miami County. Mr. Embrey said he believed a unified system worked better with larger court systems.

Rep. Hoy then asked if there was a representative from Montgomery County to testify concerning the creation of a new magistrate position in that county. There was no response to Rep. Hoy's question.

The next person to testify was Monica Hensley, Deputy Prosecuting Attorney for Switzerland County and President of the Switzerland County Bar Association, concerning the creation of a new judicial circuit for Switzerland County.

Ms. Hensley stated that Switzerland County and Jefferson County are part of a joint judicial circuit and share one circuit court judge. She said Switzerland County and Ohio County are part of a joint superior court and share one superior court judge. She stated that even though the caseload was increasing in Switzerland County, the circuit court judge had to spend most of his time in Jefferson County. She said that this resulted in cases being handled on a "piecemeal" basis in Switzerland County which was especially bad for cases involving families and juveniles.

Ms. Hensley continued by stating the Commission voted six to nothing last year to support the creation of a new judicial circuit for Switzerland County. However, she said that because a Commission endorsement required seven affirmative votes and the only other member present, Judge Michael Witte of the Dearborn Superior Court, abstained from voting because he felt he had a conflict of interest, the vote was not considered an official Commission endorsement. (The Commission minutes and final report for 2006 may be found at <http://www.in.gov/legislative/interim/committee/2006/committees/crts.html>.)

Ms. Hensley stated Switzerland County continued to need one full-time judge and one full-time prosecutor. She said that a new judicial circuit should be created for Switzerland County, that Jefferson County should remain as the only county in the current Jefferson-Switzerland joint circuit court, and that the Ohio-Switzerland joint Superior Court should be dissolved. However, she stated that, unlike last year, there was a belief that a new magistrate position should be created in Ohio County to make up for the loss of the Ohio-Switzerland joint Superior Court.

The next person to testify was Judge James Humphrey of the Dearborn-Ohio Circuit Court. Judge Humphrey said that Dearborn County and Ohio County "must be taken care of" when considering the creation of a new circuit for Switzerland County. He said the Dearborn and Ohio judicial system was a "complicated system" and that if the Ohio-Switzerland joint Superior Court was abolished, there would probably be a need to create a new magistrate position in Ohio County.

The Commission then received copies of letters from the Ohio County Council and Commissioners, Aaron Negangard, Prosecuting Attorney for Dearborn and Ohio Counties, and Charles Fehrman, President of the Dearborn County Council, (Handout #4) asking the Commission to consider the concerns of Dearborn County and Ohio County before making any changes to the current judicial system in southeast Indiana that would affect the courts in those counties.

In response to questions from Commission members, Ms. Hensley stated that the term of Judge John Mitchell of the Ohio-Switzerland Superior Court expired December 31, 2008. She said that is why it was important to make changes to the Ohio and Switzerland court systems as soon as possible before the next election cycle.

The next person to testify was Sen. Jim Lewis representing Switzerland County. Sen. Lewis said that he supported the creation of a new judicial circuit for Switzerland County. He said that since the casinos had begun operating on the Ohio River, the caseload had increased in the Jefferson-Switzerland Circuit Court and continued to do so.

The next person to testify was Dillon Dorrell from the Ohio County Council. Mr. Dorrell stated he did not object to the creation of a judicial circuit for Switzerland County.

However, he stated Ohio County was "unique" and asked the Commission to "listen to our concerns and input" before making any changes to their current court system.

The next person to testify was Judge Tom Clem of the Madison County Court #2 concerning converting the two judges of the Madison County Court into judges of the Madison Superior Court. Judge Clem said every other county but Madison County had restructured their county courts. He stated that this restructuring should have occurred in Madison County "a long time ago" but local political concerns had intervened.

Judge Clem continued by stating this restructuring in Madison County would have no fiscal impact and cause no problems with jurisdiction. He said this change would allow the Madison County court system to do more with the same resources.

The next person to testify was Judge David Hopper of the Madison County Court #1. Judge Hopper said he supported converting the judges of the last county court in the state into superior court judges. He said he had a "slight preference" for creating a unified circuit court system in Madison County, but the current judge of the Madison Circuit Court did not support that idea. He said that changing the county court judges to superior court judges would better serve Madison County.

In response to questions from Commission members, Judge Clem said making these changes in Madison County would expand the current jurisdiction of the two county court judges and increase efficiency in the whole court system. He also said the current judge of the Madison Circuit Court did not object to this change.

The Commission then received copies of letters from Sen. Timothy Lanane and from Judge Dennis Carroll and Judge Thomas Newman, Jr. of the Madison Superior Court.

Sen. Lanane's letter asked the Commission to consider converting the two Madison County Court judges into Madison Superior Court judges. The letter states the additional jurisdiction acquired by these two judges would cause a "more equitable and efficient" distribution of the caseload within the county. The letter also states this request has the support of the Madison County Commissioners and the Prosecuting Attorney of Madison County.

The letter signed by Judge Carroll and Judge Newman opposes converting the two county court judges to superior court judges because it "elevates title over substance" and "sidesteps the position of five of our six judges that an upgrade of the entire system...to a single circuit court...is the best way to give Madison County's citizens a better and more efficient judiciary."

Rep. Hoy then stated that votes on endorsing the requests for new judicial officers would be taken at the next Commission meeting.

The Commission then considered the three preliminary drafts of legislation discussed at the first Commission meeting on September 11, 2007.

The Commission voted unanimously by a show of hands to endorse PD 3039 concerning the Clerk of the Supreme Court. (PD 3039 removes references to the Clerk from statutes concerning compensation of elected officials and annual economic interest statements filed by judicial officers or candidates for judicial office who are subject to election or a retention vote. As of January 1, 2007, the Clerk ceased being a statewide elected office and is now appointed by the Chief Justice.)

The Commission voted unanimously by a show of hands to endorse PD 3154 concerning the issuance of hardship driving licenses. (PD 3154 allows a petition for a hardship driving license to be filed in the superior court of the county in which the petitioner resides. Under current law the petition can be filed only in the circuit court of the county in which the petitioner resides. However, the PD provides that if at the time a petition for a hardship driving license is filed the petitioner is a defendant in a pending case concerning the operation of a vehicle while intoxicated, the petitioner is on probation after being convicted of operating a vehicle while intoxicated, or the petitioner's driving privileges have been suspended after the petitioner was convicted of committing a controlled substance offense, the petition may be filed only in the circuit court or superior court in which the case is pending or the petitioner was convicted.)

The Commission then discussed PD 3040 which would provide that the powers of a magistrate appointed by the Vanderburgh Superior Court include the power to enter a final order or judgment in a proceeding involving the small claims docket of the court and concerning protective orders to prevent domestic or family violence. Rep. Hoy stated he was asking the Commission to consider this proposal at the request of a Vanderburgh Superior Court judge. He added that magistrates in Allen County and St. Joseph County currently had this authority.

Chief Justice Shepard stated that he was not aware that magistrates in those two counties currently had this power. He stated that this seemed to be something that would be "a good idea everywhere or a bad idea everywhere." He stated that he did not think the General Assembly would want to add this authority "piecemeal" on a county by county basis.

Rep. Hoy then stated he would hold the vote on PD 3040 and attempt to get information on this concept from Allen County and St. Joseph County to present at the next Commission meeting.

After a brief Commission discussion, Rep. Hoy announced the third and final Commission meeting for the interim would be held Monday, October 15, 2007, at 1:00 P.M.

Rep. Hoy adjourned the meeting at 2:50 P.M.